THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.22202 OF 2005

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Dt:08.11.2005

Between:

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Muralidhar

… Petitioner

Guntur Dist.Milk Producers Mutually

Aided Cooperative Union Ltd.

and

… Respondent

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.22202 OF 2005

ORDER:

The petitioner was appointed as Manager (Personnel) in the respondent society. The society passed a resolution, dated 01.09.2005, proposing to appoint the petitioner as Labour Welfare Officer. Consequential order was issued on 06.10.2005. The petitioner states that Section 49 of A.P. Factories Act, 1948 read with Section 76-B of A.P. Factories Rules, 1950 require that an individual must hold the qualification of a Degree and Diploma of two years in Personnel Management, to be employed as a Labour Welfare Officer. He contends that he does not hold these qualifications and despite the same, the respondent had appointed him as a Labour

Welfare Officer, only with a view to displace him as the Manager (Personnel).

In the counter affidavit filed on behalf of the respondent, it is stated that the petitioner is eligible to be appointed as a Labour Welfare Officer and, in fact, he held that office during certain spells. It is also pointed that the petitioner had since been issued a charge memo, dated 21.10.2005, and in fact, the petitioner submitted his reply, dated 22.10.2005, admitting a part of the charge.

Sri M.Vijaya Kumar, the learned counsel for the petitioner submits that the appointment of the petitioner as Labour Welfare Officer is contrary to the provisions of the Act and the Rules and his appointment is nothing but a colourable exercise of powers on the part of the respondent. He also contends that the charge memo was issued only with a view to sustain the otherwise illegal action and that the contents thereof are contrary to the complaint submitted by the Managing Director in the Criminal Court concerned.

Sri V.V.Prabhakara Rao, the learned standing counsel for the respondent, on the other hand, submits that the petitioner is very much qualified to be appointed as Labour Welfare Officer and as long as the appointing authority satisfied about it, the petitioner cannot refuse to take charge of the post. He further contends that whatever may have been the situation when the petitioner was appointed as Labour Welfare Officer, at present, it is impossible for them to continue him as Manager (Personnel), in view of the enquiry into the charges levelled against the petitioner.

The petitioner challenges the action of the respondent in appointing him as Labour Welfare Officer. Certain controversies exist as to the eligibility and qualification of the petitioner to be appointed as such. The necessity to deal with the same is obviated on account of certain subsequent developments. The respondent issued a charge memo, dated 21.10.2005, to the petitioner levelling as many as four charges. On the next day itself, the petitioner, obviously out of emotion or frustration, submitted a reply accepting his liability, at least, in relation to charge No.1 and he left it open to the respondent to take action against him. The other charges are yet to be dealt with. In view of this development, even if it is assumed that the petitioner ought not to have been appointed as Labour Welfare Officer, he cannot be continued as Manager (Personnel). The reason is that an enquiry against a person, who is In-charge of entire Personnel Department, would become untenable as long as he holds that post.

Having regard to the facts and circumstances of the case, the writ petition is disposed of directing that:

a. it shall be open to the petitioner to submit a comprehensive explanation dealing with all the charges, notwithstanding the reply submitted by him on 22.10.2005, within fifteen days from today.

b. the enquiry and further action, in pursuance of the charge memo, dated 21.10.2005, shall be concluded within a period of three months from the date of receipt of a copy of this order. Till such time, the petitioner shall be under obligation to function as Labour Welfare Officer.

c. in case, the petitioner is absolved of the charges, it shall be open to him to make a representation to the respondent about the lack of qualification on his part to hold the post of Labour Welfare Officer and the same shall be dealt with by the respondent.

_____ 08.11.2005

Note: Issue C.C. in one week.

(B/o)

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